

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GEORGE BENTON, JR.,

Defendant-Appellant.

UNPUBLISHED

February 21, 2003

No. 236016

Wayne Circuit Court

LC No. 00-008026-01

Before: Whitbeck, C.J., and Griffin and Owens, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of second-degree murder, MCL 750.317, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to 300 to 600 months' imprisonment for the second-degree murder conviction, and a consecutive two-year term for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant contends that the trial court erred when it allowed the prosecutor to introduce a codefendant's prior consistent statement. Generally, a trial court's evidentiary decisions are reviewed for an abuse of discretion. *People v Cain*, 238 Mich App 95, 122; 605 NW2d 28 (1999).

MRE 801(d)(1)(B) provides that a statement, that would otherwise be hearsay, is not hearsay if the "declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is . . . consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive" In *People v Jones*, 240 Mich App 704, 707-708; 613 NW2d 411 (2000), quoting *United States v Bao*, 189 F3d 860, 864 (CA 9, 1999), we explained that four elements must be shown to establish admissibility under MRE 801(d)(1)(B):

- (1) the declarant must testify at trial and be subject to cross-examination;
- (2) there must be an express or implied charge of recent fabrication or improper influence or motive of the declarant's testimony;
- (3) the proponent must offer a prior consistent statement that is consistent with the declarant's challenged in-court testimony; and,
- (4) the prior consistent statement must be made prior to the time that the supposed motive to falsify arose.

Here, defendant only challenges the second and fourth elements.

We note that defense counsel's opening statement implicitly questioned the codefendant's credibility:

One of those things is whether or not—and you may all have heard in the media the past few weeks or so about witnesses being detained and kept until—well, for a day or two before they made certain statements. It will be up to you to determine whether or not any of the witnesses that will be called to take this stand may have been coerced into saying something that perhaps is not true in an effort to get themselves extricated from a situation.

Defense counsel further argued that the jurors should “consider what those witnesses might have to lose in terms of whether or not they should hide evidence or change their testimony.” During cross-examination, defense counsel elicited the codefendant's testimony that he was only testifying because of a plea bargain deal made with the prosecution. Accordingly, we believe that there was, at the very least, an implied charge that the codefendant's testimony was improperly motivated or influenced by the plea bargain. *Jones, supra* at 708.

Further, we note that the codefendant testified that, at the time he gave the statement, he had not been promised anything. There is no indication that he was offered the plea bargain in exchange for the statement. In fact, the statement at issue preceded the prosecutor's plea bargain offer. *Jones, supra*, at 711-712. Because all four *Jones* elements were satisfied, the trial court did not abuse its discretion in allowing the prior consistent statement. *Cain, supra* at 95.

We reject defendant's challenge to the proportionality of his sentence. Defendant was sentenced within the sentencing guidelines recommended range of 180 to 300 months. He has not established a scoring error, nor has he shown that his sentence was based on inaccurate information. In fact, during the sentencing hearing, defendant acknowledged there were no errors in the scoring of the guidelines. Accordingly, the sentence must be upheld. MCL 769.34(10).¹

Affirmed.

/s/ William C. Whitbeck, C.J.
/s/ Richard Allen Griffin
/s/ Donald S. Owens

¹ In addition, for the reasons stated in *People v Hegwood*, 465 Mich 432; 636 NW2d 127 (2001), we also reject defendant's challenge to the constitutionality of MCL 769.34(10).